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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/929,693 | 08/13/2001 | Ernst Maximilian Spengler | 4116 | 8851 |

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EXAMINER

KUHNS, ALLAN R

ART UNIT

PAPER NUMBER

1732

DATE MAILED: 09/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

A9-8

Office Action Summary

Application No.
09/929,643

Applicant(s)
SPENGLER

Examiner
KUHNS

Group Art Unit
1732

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE(3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-35 is/are pending in the application.
- Of the above claim(s) 34-35 is/are withdrawn from consideration.
- ☒ Claim(s) 30 is/are allowed.
- ☒ Claim(s) 1-23 AND 29 is/are rejected.
- ☒ Claim(s) 24-28 is/are objected to.
- ☒ Claim(s) 1-35 are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2,3,4,7
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 1732

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-30, drawn to a method of making a molded component, classified in class 264, subclass 321.
 - II. Claims 31-35, drawn to apparatus for making a molded component, classified in class 425, subclass 383.
2. The inventions are distinct, each from the other because:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process such as one in which a material which has not been foamed is shaped.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art requiring divergent fields of search for the respective inventions, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Walter Fasse on August 26, 2003 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-30. Affirmation of this election must be made by applicant in replying to this Office action. Claims 31-35 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Art Unit: 1732

5. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This claim is confusing in the manner it further limits claim 4 because it is unclear whether the foam backing itself becomes the pressure medium or whether another foamable material is introduced into the mold and expands to apply pressure to the foam backing.

Clarification is required.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-2, 15-23 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ekendahl. Ekendahl discloses or suggests the basic claimed method of making a molded component having a molded in surface texture, using a molding apparatus including a front mold having a front mold surface with a surface texture (column 8, lines 4-6), and a back mold having a back mold surface opposed to the front mold, the method including (1) providing a cover sheet including a skin film material and a foam backing material, (2) heating the cover sheet, (3) arranging the cover sheet between the front and back molds with the skin film facing toward the front mold and the foam backing toward the back mold and then moving one of the molds toward the other mold, (4) molding the cover sheet and bringing the skin film into direct contact with the front mold surface so as to mold into the skin film a surface texture that is the inverse of the front

Art Unit: 1732

mold surface texture, and (5) cooling the cover sheet and moving the mods apart. It is well known to heat a material to equal or above its melting temperature (and into a viscous state, as in claim 2) during thermoforming and such would have been obvious to one of ordinary skill in the art practicing the process of Ekendahl in order to soften the skin material such that it may become textured. It is submitted that the foam backing is heated to below its melting temperature since there is no disclosure of melting this layer during this stage of the process.

Temperature and orientation, as in claims 15-17 and 19, would have been readily determined through routine experimentation by one of ordinary skill in the art as part of process optimization. Ekendahl teaches the use of infrared radiation, as in claim 18, at column 6, lines 23-33. Ekendahl teaches or suggests the use of polyolefin material, as in claims 20-23, at column 4, lines 36-45, and use of closed cell material, as in claim 20, is well known and would have been obvious to one of ordinary skill in the art since no fluid transmission through the foam is required. Ekendahl teaches or suggests the aspects of claim 29 at column 1, lines 13-25.

8. Claims 3-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ekendahl as applied to claims 1-2, 15-23 and 29 above, and further in view of Winstead. Also in a method of shaping a skin backed by a foamed layer, Winstead notes at column 1, line 30 that it is conventional to use differential air pressure as part of a thermoforming shaping process. Based on this disclosure it would have been obvious to one of ordinary skill in the art to use either vacuum or positive pressure in the practice of the process of Ekendahl since Winstead suggests

Art Unit: 1732

that either type of pressure would be effective in the shaping process. Ekendahl teaches the use of vacuum, as in claims 6-7, and removal of air, particularly by venting, as in claims 4-5, is well known and would have been obvious in order to equalize pressure following shaping. Winstead teaches the use of air, as in claim 11, and sealing, as in claim 12, is well known and would have been obvious to effect the process. The laminate of Ekendahl has a shape, as the process is begun, as in claim 14. Required pressures, as in claims 8-10, would have been readily determined through routine experimentation by one of ordinary skill in the art as part of process optimization.

9. Claim 30 is allowed.

10. Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The proposed drawing correction filed February 19, 2003 is acceptable to the examiner.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (703) 308-3462. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni, can be reached on (703) 305-5493. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Serial Number: 09/929,693

Page 6

Art Unit: 1732

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Allan R. Kuhns
ALLAN R. KUHNS
PRIMARY EXAMINER AU 1732
8-27-03